

No. PD-0243-21

In the
Court of Criminal Appeals
Austin, Texas

FILED
COURT OF CRIMINAL APPEALS
6/16/2021
DEANA WILLIAMSON, CLERK

No. 09-20-00296-CR

In the
Court of Appeals for the
Ninth District of Texas at Beaumont

No. 61738
In the 356th District Court
Hardin County, Texas

ALLEN CHRISTOPHER LANCLOS
Petitioner

v.

THE STATE OF TEXAS
Respondent

STATE'S REPLY BRIEF

REBECCA WALTON
District Attorney
Hardin County

MICHELLE R. TOWNSEND
Assistant District Attorney
Hardin County
State Bar Number: 24049295

ORAL ARGUMENT NOT GRANTED

TABLE OF CONTENTS

TABLE OF CONTENTS	1
INDEX OF AUTHORITIES	2
STATEMENT OF THE CASE	5
STATEMENT OF FACTS	7
SUMMARY OF THE ARGUMENT	10
REPLY TO PETITIONER’S SOLE GROUND FOR REVIEW	11
<i>Petitioner Received All Relief Requested</i>	11
<i>Petitioner’s Unsworn Petition Rendered Appeal Subject to Dismissal</i>	14
<i>Article 17.151 Inapplicable to Petitioner</i>	15
PRAYER FOR RELIEF	18
CERTIFICATES OF SERVICE AND COMPLIANCE	19

INDEX OF AUTHORITIES

CASES

<i>Ex parte Castillo-Lorente</i> , 420 S.W.3d 884 (Tex. App.—Houston [14th Dist.] 2014, no pet.)	11
<i>Ex parte Dupuy</i> , 498 S.W.3d 220 (Tex. App.—Houston [14th Dist.] 2016, no pet.)	10, 12
<i>Ex parte Gill</i> , 413 S.W.3d 425 (Tex. Crim. App. 2013)	9
<i>Ex parte Golden</i> , 991 S.W.2d 859 (Tex. Crim. App. 1999)	12
<i>Ex parte Lanclos</i> , No. 09-20-00296-CR, 2021 WL 895837 (Tex. App.— Beaumont Mar. 10, 2021, pet granted June 7, 2021)	passim
<i>Ex parte Rodriguez</i> , 595 S.W.2d 549 (Tex. Crim. App. 1980)	10, 11
<i>Ex parte Rubac</i> , 611 S.W.2d 848 (Tex. Crim. App. 1981)	10, 11
<i>Ex parte Ruiz</i> , 129 S.W.3d 751 (Tex. App.—Houston [1st Dist.] 2004, no pet.)	11
<i>Ex parte Tucker</i> , No. 03-20-00372-CR, 2020 WL 7776448 (Tex. App.—Austin Dec. 31, 2020, no pet. h.) (mem. op., not designated for publication)	13
<i>Ex parte Williams</i> , 467 S.W.2d 433 (Tex. Crim. App. 1971)	10, 11
<i>Johnson v. State</i> , 490 S.W.3d 895 (Tex. Crim. App. 2016)	10

<i>Kniatt v. State</i> , 206 S.W.3d 657 (Tex. Crim. App. 2006)	14
<i>Montgomery v. State</i> , 810 S.W.2d 372 (Tex. Crim. App. 1990)	10
<i>State v. Hill</i> , 499 S.W.3d 853 (Tex. Crim. App. 2016)	9

STATUTES

TEX. CODE CRIM. PROC. ANN. art. 1.08 (West Supp. 2019)	13
TEX. CODE CRIM. PROC. ANN. art. 11.01 (West Supp. 2019)	13
TEX. CODE CRIM. PROC. ANN. art. 11.14(5) (West Supp. 2019)	12
TEX. CODE CRIM. PROC. ANN. art. 11.23 (West Supp. 2019)	13
TEX. CODE CRIM. PROC. ANN. art. 17.151 § 1(1) (West Supp. 2019)	13
TEX. CODE CRIM. PROC. ANN. art. 17.151 § 2(4) (West Supp. 2019)	14
TEX. CODE CRIM. PROC. ANN. art. 42A.751(c) (West Supp. 2019)	14
TEX. CODE CRIM. PROC. ANN. art. 42A.751(d) (West Supp. 2019)	14

OTHER AUTHORITIES

TEX. GOV. EXEC. ORDER No. GA-13 (Mar. 29, 2020)	13, 14
---	--------

RULES

TEX. R. APP. P. 43.2(f)	13
TEX. R. APP. P. 70.2	4
TEX. R. APP. P. 70.3	4

TEX. R. APP. P. 9.4(i)	18
TEX. R. APP. P. 9.5	18

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

COMES NOW, the State of Texas and files this brief on the merits pursuant to the Texas Rules of Appellate Procedure, Rule 70. TEX. R. APP. P. 70.2, 70.3.

STATEMENT OF THE CASE

Petitioner was charged with three counts of the felony offense of assault on a public servant and bail set at \$750,000 on each charge. (CR 14-16).¹ On October 9, 2020, the trial judge held a hearing on and took under advisement petitioner's unsworn application for "writ of habeas corpus requesting reasonable bond." (CR 4-9; RR II 1, 9; RR III 5). On December 18, 2020, the trial judge held a hearing on petitioner's unsworn "application for writ of habeas corpus under article 17.151." (CR 10-13; RR III 4-6). After the December 18th hearing, the trial judge reduced bail in each case to \$500,000. (CR 14).

On December 28, 2020, petitioner filed notice of appeal from the trial court's ruling on his application for writ of habeas corpus based upon article 17.151. (CR 17). On March 10, 2021, the Court of Appeals for the Ninth District at Beaumont issued a memorandum opinion overruling petitioner's sole issue and affirming the trial court's order. *Ex parte Lanclos*, No. 09-20-00296-CR, 2021 WL 895837, at *2

¹ The pagination of the .pdf file of the clerk's record differs from the pagination of the document contained therein. In this brief, citations to the clerk's record refer to the page number of the .pdf file.

(Tex. App.—Beaumont Mar. 10, 2021, pet granted June 7, 2021). This petition for review followed.



STATEMENT OF FACTS

Petitioner was charged with three counts of the felony offense of assault on a public servant and bail originally set at \$750,000 on each charge. (CR 14-16). Petitioner filed an unsworn application for “writ of habeas corpus requesting reasonable bond” based upon article 17.15 of the Texas Code of Criminal Procedure on September 11, 2020. (CR 4-9). Within this habeas application petitioner suggested he could post bail “totaling \$150,000 or less.” (CR 4). Attached as Exhibit A to this application is the affidavit of Kristy Lanclos. (CR 8). In Exhibit A, Ms. Lanclos states that she is petitioner’s wife and that petitioner is presently in custody on bonds totaling \$2,250,000. *Id.* Ms. Lanclos further states she contacted two bail bonds companies and “[b]oth bondsman [*sic*] have advised me that they will not post bond for that amount or their costs are prohibitive.” *Id.*

On October 9, 2020, the trial judge held a hearing on petitioner’s habeas application based on article 17.15. (CR 4-9; RR II 1). At the hearing, it was adduced that petitioner has an extensive criminal history, dating from 1989 through 2016 and including violent offenses such as robbery, terroristic threat, harassment, and assault in state court as well as a federal charge on which petitioner served a 48-month sentence. (RR II 7). Approximately two months after being placed on community supervision for a different offense, petitioner was charged with committing the present offenses of assault on a public servant thereby violating the terms and

conditions of his community supervision. (RR II 7-8). The record also indicates petitioner had “a couple misdemeanor” charges pending against him at the time he was charged with these three counts of assault on a public servant and that these new charges would violate petitioner’s conditions of bond in those previously pending cases. (RR II 7-8; RR III 5). The trial judge concluded the hearing by taking under consideration the application, evidence, and arguments of counsel. (RR II 9).

On November 24, 2020, petitioner filed a second unsworn application for writ of habeas corpus. (CR 10-13). In this application, petitioner alleged a violation of article 17.151 of the Texas Code of Criminal Procedure and sought release on a personal bond or, alternatively, a reduction sufficient to cause his release from custody of the amounts of bail required. (CR 10-11).

The trial judge held a hearing on this habeas application on December 18, 2020. (RR III 4-6). Counsel for petitioner began the hearing by stating that the charges against petitioner had not yet been indicted and that petitioner had been in custody more than 100 days. (RR III 4). Counsel sought to have the amount of bail on each charge reduced to “a lot lower than what it is.” (RR III 4). Counsel contended petitioner was not a flight risk and would agree to and comply with bond conditions set by the court. (RR III 4-6). After this hearing, the trial judge reduced bail in each case to \$500,000. (CR 14).

The court of appeals reviewed the trial court's order for abuse of discretion as well as the evidence presented by petitioner as to his ability to make bond. *Lanclos*, No. 09-20-00296-CR, 2021 WL 895837, at *2. Petitioner contends that as of June 9, 2021, he is still detained in custody and that this is the best evidence of his bail being set at an amount he cannot afford. *Petitioner's Brief on the Merits on Petition for Discretionary Review* (hereinafter *Petitioner's Brief*), pp. 4, 10-11.



SUMMARY OF THE ARGUMENT

Petitioner contends on petition for discretionary review that the intermediate court of appeals erred by “shifting the burden” to him to establish “what constitutes an ‘affordable bond’.” *Petitioner’s Brief*, pg. 4. However, petitioner relied solely on article 17.151 of the Texas Code of Criminal Procedure to support his argument that the trial judge erred when he allegedly denied habeas relief. The court of appeals rejected petitioner’s argument after properly apply the proper standard of review, namely: “[v]iewing the entire record in favor of the trial court’s ruling” for abuse of discretion. *Lanclos*, No. 09-20-00296-CR, 2021 WL 895837, at *2. Because petitioner “obtained relief when the trial judge reduced the amount of his bonds by \$750,000[,]” the court of appeals correctly found petitioner received all the relief he requested the trial court did not abuse its discretion. *Id.* Accordingly, petitioner’s sole ground for review is meritless and the opinion and judgment of the court of appeals should be affirmed.



REPLY TO PETITIONER'S SOLE GROUND FOR REVIEW

In his sole ground for review, petitioner claims the court of appeals erroneously upheld the trial court's order reducing the amount of bail set in each case pending against petitioner. However, the court of appeals properly concluded that because petitioner presented little, if any, evidence of his ability to make bond and provided no details regarding his specific assets and financial resources, "the trial court could have reasonably concluded that [petitioner]'s evidence regarding his financial circumstances was inadequate and that it was justified in reducing [petitioner]'s total bonds from \$2,250,000 to \$1,500,000." *Lanclos*, No. 09-20-00296-CR, 2021 WL 895837, at *2.

Petitioner Received All Relief Requested

Petitioner requested the trial court "order a personal bond, or [] reduce the amount of bail." (CR 10-11). The trial court heard petitioner's petition and subsequently reduced bail in each of the three cases. (CR 14).

As noted by the court of appeals, petitioner did not present sufficient evidence as to the excessiveness of bail set or his inability to post bail; thus, he did not establish the trial court abused its discretion. *See Lanclos*, No. 09-20-00296-CR, 2021 WL 895837, at *2; *see also Ex parte Gill*, 413 S.W.3d 425, 428 (Tex. Crim. App. 2013) (standard of reviewing trial court's ruling on habeas petition is abuse of discretion); *see also State v. Hill*, 499 S.W.3d 853, 865 (Tex. Crim. App. 2016)

(quoting *Montgomery v. State*, 810 S.W.2d 372, 380 (Tex. Crim. App. 1990)) (trial court abuses discretion when decision “falls outside the zone of reasonable disagreement,” or when trial judge acts “without reference to any guiding rules and principles”); *Johnson v. State*, 490 S.W.3d 895, 908 (Tex. Crim. App. 2016) (same).

As discussed by the court of appeals, a “bond reduction is not favored ‘when the defendant makes vague referenced to inability to make bond without detailing his specific assets and financial resources’.” *Lanclos*, No. 09-20-00296-CR, 2021 WL 895837, at *2 (citing *Cooley v. State*, 232 S.W.3d 228, 236 (Tex. App.—Houston [1st Dist.] 2007, no pet.) and *Ex parte Castellanos*, 420 S.W.3d 878, 883 (Tex. App.—Houston [14th Dist.] 2014, no pet.)). This is so because, as this Court has held, the burden of proof is on the petitioner for reduction in bail to show that the bail set is excessive. *See Ex parte Rubac*, 611 S.W.2d 848, 849-50 (Tex. Crim. App. 1981); *Ex parte Rodriguez*, 595 S.W.2d 549, 550 (Tex. Crim. App. 1980). Further, to demonstrate inability to make bail, a defendant generally must establish that his funds and his family’s funds have been exhausted. *Ex parte Dupuy*, 498 S.W.3d 220, 234 (Tex. App.—Houston [14th Dist.] 2016, no pet.); *see also Ex parte Williams*, 467 S.W.2d 433, 434 (Tex. Crim. App. 1971) (accused must provide evidence of efforts made to furnish bail in the amounts fixed).

The only evidence petitioner presented concerning his ability to make bail was given in the habeas application he filed alleging a violation of article 17.15 and even

that consists only of the brief, conclusory affidavit of his wife. (CR 4-7, 8). In his unsworn petition, petitioner suggests he could post bail “totaling \$150,000 or less” but offers no evidence to show how he arrived at that amount. (CR 4, 8); *see Ex parte Castillo-Lorente*, 420 S.W.3d 884, 889 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (citing *Ex parte Ruiz*, 129 S.W.3d 751, 754 (Tex. App.—Houston [1st Dist.] 2004, no pet.) (concluding that bail bondsman’s testimony of “largest bond” defendant could make did not carry burden to establish inability to make bail)). Petitioner offered no documentary evidence of his assets and financial resources, nor did he testify at either hearing. *See generally*, (RR II, III). Petitioner retained counsel and generated resources sufficient to do so on three felony charges by “s[elling] some property” but provided no evidence that resources available to him were either depleted or otherwise unavailable to him for the purpose of making bail. (CR 8).

Because petitioner offered very little evidence supporting his claimed inability to make bail in the amount set and no evidence that resources available to him were depleted or otherwise unavailable, the court of appeals concluded that the trial court could have reasonably concluded bail of \$500,000 per case was appropriate under the circumstances. *Lanclos*, No. 09-20-00296-CR, 2021 WL 895837, at *2 (citing *Cooley*, 232 S.W.3d at 236; *Castellanos*, 420 S.W.3d at 883); *see also Rubac*, 611 S.W.2d at 849-50; *Rodriguez*, 595 S.W.2d at 550; *Williams*, 467 S.W.2d at 434;

Dupuy, 498 S.W.3d at 234. Accordingly, the court of appeals properly held that petitioner failed to carry his burden to establish the trial court abused its discretion by reducing bail in each of petitioner's cases to \$500,000 and petitioner's sole ground for review is meritless and should be overruled.

Moreover, arguments presented to the court of appeals but not decided in their opinion militate in favor of finding the judgment of the court of appeals should be affirmed; to wit:

Petitioner's Unsworn Petition Rendered Appeal Subject to Dismissal

A petition for writ of habeas corpus must be made under oath that the allegations of the petition are true, according to the belief of the petitioner. TEX. CODE CRIM. PROC. ANN. art. 11.14(5) (West Supp. 2019). An applicant's failure to swear to the truth of the facts alleged in his petition deprives him of the opportunity to prove those allegations. *Ex parte Golden*, 991 S.W.2d 859, 862 & n.2 (Tex. Crim. App. 1999). Because the habeas application at issue is not properly verified, this Court should decline to consider the merits of the issues raised and dismiss this appeal. (CR 10-13); *see* TEX. R. APP. P. 43.2(f).

Article 17.151 Inapplicable to Petitioner

The writ of habeas corpus is a writ of right and the remedy to be used when any person is restrained in his liberty. TEX. CODE CRIM. PROC. ANN. arts. 1.08, 11.01 (West Supp. 2019). The writ applies to all cases of confinement and restraint where such power is exercised in a manner or degree not sanctioned by law. *Id.* at art. 11.23.

Petitioner alleged in his habeas petition that the State unlawfully restrained him in his liberty by failing to comply with the provisions of article 17.151. *Id.* at art. 17.151 § 1(1); *see also* (CR 10-11; Petitioner’s Brief, pp. 6-11). However, on March 29, 2020, Governor Abbott issued an executive order suspending article 17.151 “to the extent necessary to prevent any person’s automatic release on personal bond because the State is not ready for trial.” TEX. GOV. EXEC. ORDER No. GA-13 (Mar. 29, 2020).

Petitioner relied solely on article 17.151 as his grounds for relief in his petition for writ of habeas corpus the denial of which forms the basis of this appeal. (CR 10-13); *see also* (Petitioner’s Brief, pp. 6-11). Because article 17.151 was and remains suspended, petitioner cannot demonstrate the alleged violation of article 17.151 constitutes an exercise of power by the State in a manner or degree not sanctioned

by law.² TEX. CODE CRIM. PROC. ANN. arts. 1.08, 11.01, 11.23 (West Supp. 2019); *see also id.* at art. 17.151 § 1(1) (requiring release of accused if the state is not ready for trial within 90 days from the commencement of detention in felonies); TEX. GOV. EXEC. ORDER No. GA-13 (Mar. 29, 2020) (suspending article 17.151)

Further, the record indicates petitioner had “a couple misdemeanor” charges pending against him at the time he was charged with these assaults on a public servant and that these new charges would violate the bond conditions on those previously pending cases. (RR II 7-8; RR III 5). Petitioner was also on community supervision for a different offense when he was charged with these offenses and therefore violated the terms and conditions of his community supervision by committing these new law violations. (RR II 7-8). As such, section 1 of article 17.151 mandating release is inapplicable to petitioner. TEX. CODE CRIM. PROC. ANN. art. 17.151 § 2(4) (“The provisions of this article do not apply to a defendant who is ... being detained for a violation of the conditions of a previous release related to the safety of a victim of the alleged offense or to the safety of the community under this article.”); 42A.751(c), (d) (restrictions on bail when accused arrested for alleged violation of a condition of community supervision) (West Supp. 2019). The burden

² To the extent petitioner relies on *Ex parte Tucker* to support his contentions, such reliance is misplaced because the State in *Tucker* “expressly disclaimed any reliance on the Governor’s executive order suspending article 17.151.” *Ex parte Tucker*, No. 03-20-00372-CR, 2020 WL 7776448, at *3 n.4 (Tex. App.—Austin Dec. 31, 2020, no pet. h.) (mem. op., not designated for publication); *see* (Petitioner’s Brief, pg. 10).

is on petitioner to prove his claim and he has failed to do so. *See Kniatt v. State*, 206 S.W.3d 657, 664 (Tex. Crim. App. 2006) (applicant for writ of habeas corpus bears burden of proving his allegations). For these additional reasons, petitioner's sole ground for review is without merit and should be overruled and the judgment of the court of appeals affirmed.



PRAYER FOR RELIEF

For the foregoing reasons, it is respectfully submitted that all things are regular and opinion and judgment of the court of appeals should be affirmed.

/s/ Rebecca Walton
REBECCA WALTON,
District Attorney
Hardin County, Texas

/s/ Michelle R. Townsend
MICHELLE R. TOWNSEND
State Bar Number: 24049295
Assistant District Attorney
Hardin County, Texas
P. O. Box 1409
Kountze, Texas 77625
Telephone: (409) 246-5160
Facsimile: (409) 246-5142
michelletownsendlaw@gmail.com

CERTIFICATES OF SERVICE AND COMPLIANCE

This is to certify that a copy of the foregoing instrument has been delivered in accordance with TEX. R. APP. P. 9.5 on the date of filing through the Texas EFiling System (<https://efile.txcourts.gov>) to counsel for petitioner:

Ryan W. Gertz
Attorney at Law
The Gertz Kelley Law Firm
2630 Liberty
Beaumont, Texas 77702

Further, that this document was generated on a computer program that calculates the word count to be 2,300 words. *See* TEX. R. APP. P. 9.4(i).

/s/ Michelle R. Townsend
MICHELLE R. TOWNSEND
State Bar Number: 24049295
Assistant District Attorney
Hardin County, Texas
P. O. Box 1409
Kountze, Texas 77625
Telephone: (409) 246-5160
Facsimile: (409) 246-5142
michelletownsendlaw@gmail.com

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Rebecca Walton on behalf of Michelle Townsend
Bar No. 24049295
district.attorney@co.hardin.tx.us
Envelope ID: 54464816
Status as of 6/16/2021 11:36 AM CST

Associated Case Party: AllenChristopherLanclos

Name	BarNumber	Email	TimestampSubmitted	Status
Ryan Gertz		rgertz@gertzlawyers.com	6/16/2021 10:42:43 AM	SENT
Angie Koegel		angie@gertzlawyers.com	6/16/2021 10:42:43 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Rebecca Walton		District.Attorney@co.hardin.tx.us	6/16/2021 10:42:43 AM	SENT
Michelle Townsend	24049295	MTownsend@brazoria-county.com	6/16/2021 10:42:43 AM	SENT